

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

No. CR 01-60016-AA

Plaintiff,

OPINION AND ORDER

v.

JOHN GAUDENTI,

Defendant.

AIKEN, Judge:

Defendant moves for reconsideration of his sentence imposed by final judgment on October 4, 2002. Relying on United States v. Booker, 125 S. Ct. 738 (2005), defendant argues that he should be eligible for resentencing and receive a lower sentence.

However, the Supreme Court held in Booker that its holding applied to "all cases on direct review" and made no explicit statement of retroactivity to cases already final. Booker, 125 S.

Ct. at 769. No court has held that Booker is retroactive to cases beyond those on direct review; rather, the Ninth Circuit and numerous courts have ruled consistently that Booker is not retroactive to cases that were rendered final before the Supreme Court's ruling on January 12, 2005. See United States v. Cruz, ____ F.3d ___, 2005 WL 2243113 (9th Cir. Sept. 16, 2005); United States v. Bellamy, 411 F.3d 1182 (10th Cir. 2005); Lloyd v. United States, 407 F.3d 608 (3rd Cir. 2005); Varela v. United States, 400 F.3d 864, 868 (11th Cir. 2005); Humphress v. United States, 398 F.3d 855, 862-63 (6th Cir. 2005); McReynolds v. United States, 397 F.3d 479, 481 (7th Cir. 2005); Green v. United States, 397 F.3d 101, 103 (2d Cir. 2005). Therefore, Booker does not afford defendant the relief he seeks.

CONCLUSION

Defendant's Motion for Consideration for Resentencing Pursuant to 18 U.S.C. § 3582 (doc. 47) is DENIED.

IT IS SO ORDERED.

Dated this 26 day of October, 2005.



Ann Aiken
United States District Judge